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James D. Wood

Name of person mailing Document or Fee

Signature

January 4, 2006

Date of Signature

Re: Application of: Rogers  
Serial No.: 10/035,464  
Filed: December 31, 2001  
For: System and Method for Securing Transactional Data  
Transmitted Over a Wireless Network in a Retail  
Store Environment  
Group Art Unit: 3621  
Confirmation No. 4003  
Examiner: Calvin L. Hewitt, II  
MMB Docket No.: 1001-0773  
NCR Docket No. 9973

**TRANSMITTAL OF AMENDED APPEAL BRIEF**

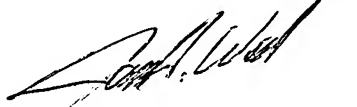
Please find for filing in connection with the above patent application the following documents:

1. Appeal Brief (43 pages);
2. Exhibit I (3 pages); and
3. One (1) return post card.

The \$500.00 fee required under 37 C.F.R. §41.20 (b)(2) has previously been previously submitted. However, please charge any fee deficiency or credit any overpayment to Deposit Account No. 13-0014.

Respectfully Submitted,

MAGINOT, MOORE & BECK

A handwritten signature in black ink, appearing to read "James D. Wood", written over a horizontal line.

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January 4, 2006

Enclosures



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

NCR Docket No. 9973

MMB Docket No. 1001-0773

Application of: **Rogers**

Group Art Unit: **3621**

Serial No. **10/035,464**

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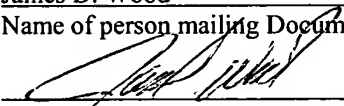
For: **System and Method for Securing Transactional Data Transmitted Over a  
Wireless Network in a Retail Store Environment**

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01/10/2006 MAHRED1 00000037 130014 10035464

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**AMENDED APPEAL BRIEF**

Sir:

This is an appeal under 37 CFR § 1.191 to the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office from the final rejection of the claims 1-20 and the withdrawal from consideration of claims 21-25 of the above-identified patent application. These claims were indicated as finally rejected or withdrawn from consideration in a final Office Action dated May 11, 2005. The \$500.00 fee required under 37 CFR § 41.20(b)(2) was previously submitted. Also, please provide

any extensions of time that may be necessary and charge any fees that may be due to Account No. 13-0014, but not to include any payment of issue fees.

**(1) REAL PARTY IN INTEREST**

NCR Corporation of Dayton, Ohio is the assignee of this patent application, and the real party in interest.

**(2) RELATED APPEALS AND INTERFERENCES**

There are no appeals or interferences related to this patent application (serial no. 10/035,464).

**(3) STATUS OF CLAIMS**

Claims 1-25 are pending in the application.

Claims 1-20 are finally rejected.

Claims 21-25 were withdrawn from consideration by the Examiner.

Claims 1-25 are being appealed, and are shown in the Appendix attached to this Appeal Brief.

**(4) STATUS OF AMENDMENTS**

Appellant has filed no amendments after receipt of the May 11, 2005, Final Office Action (the "Office Action").

**(5) SUMMARY OF CLAIMED SUBJECT MATTER**

The present invention relates to methods and systems for implementing financial transactions in a retail store through a store host network. (See, e.g. Appellant's specification at page 1, lines 4-6). In accordance with one embodiment, a system includes a number of terminals wirelessly communicating with a store host computer. (See, e.g. Appellant's specification at page 8, lines 2-7 and FIG. 1). A communication parameter regulator is coupled to the store host computer for monitoring and controlling the operation of the store host computer. (See, e.g. Appellant's specification at page 8, lines 20-22 and FIG. 1).

The communication parameter regulator may be a load balancer that monitors the message traffic between the terminals and the store host computer. (See, e.g. Appellant's specification at page 9, lines 3-6 and FIG. 1). The load balancer determines the number of messages being received by the store host computer during a communication interval and computes an estimate of the load on the store host computer using an estimate of the time required to process the received messages and to generate responses. (See, e.g. Appellant's specification at page 9, lines 6-11). Other factors which may be considered in determining the load on the store host computer include the average size of the transactional messages, the average time between messages being received, and the variance in the time of reception. (See, e.g. Appellant's specification at page 9, lines 15-17). This data may be used to determine if the processing throughput of the store host computer is being exceeded by the computational demands. (See, e.g. Appellant's specification at page 9, lines 17-21).

The load balancer may further determine the excess capacity in the communication bandwidth between the store host computer and the terminals. (See, e.g.

Appellant's specification at page 8, lines 2-7 and FIG. 1). Based upon the available bandwidth and the processing time associated with generation and transmission of a bogus message, the load balancer computes a number of bogus messages to be generated or a time over which the bogus messages should be generated. (See, e.g. Appellant's specification at page 10, lines 18-22 and FIG. 2).

The computed number is then included in a message from the store host computer to one or more terminals. (See, e.g. Appellant's specification at page 13, lines 18-21 and FIG. 2). When a bogus message request is received by a terminal, the terminal activates a bogus message generator and generates a bogus transaction message which is transmitted to the store host computer. (See, e.g. Appellant's specification at page 14, lines 9-18 and FIG. 3). The generation of bogus messages continues until the number of bogus messages or time for generating bogus messages, as established in the bogus message request, has been met. The generation and transmission of bogus messages then stops. (See, e.g. Appellant's specification at page 14, lines 14-21 and FIG. 3). Alternatively, the generation of bogus messages may be terminated if an actual transaction is commenced at the terminal. (See, e.g. Appellant's specification at page 14, lines 20-23 and FIG. 3).

Accordingly, a system in accordance with the present invention obfuscates the transmission of actual transaction messages from retail terminals to a host computer by further transmitting bogus transaction messages from retail terminals to a host computer under the control of a communication parameter regulator coupled to the host computer.

**(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 21-25 were not considered by the Examiner as allegedly being drawn to an invention distinct from the invention of claims 1-20.

Claims 1-20 stand rejected under 35 U.S.C. §101 as lacking utility.

Claims 2 and 8-14 stand rejected under 35 U.S.C. §112 as being indefinite.

Claims 1-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over International Publication No. WO200046959 to Nordenstam et al. (hereinafter “Nordenstam”) in view of U.S. Patent No. 4,262,359 to Cory et al. (hereinafter “Cory”) and U.S. Patent No. 6,502,135 to Munger et al. (hereinafter “Munger”).

**(7) ARGUMENT**

**The Restriction Requirement Was Improper**

The Examiner required a restriction of the claims and withdrew claims 21-25 from examination citing to 35 U.S.C. 121 for authority. (Office Action at page 2). The Examiner’s restriction requirement does not satisfy the statutory prerequisite of 35 U.S.C. 121 and the restriction requirement should be reversed.

**1. The Statutory Requirement for Restriction**

The statutory basis for the restriction practice of the U.S. Patent and Trademark Office (the PTO) is set forth in 35 U.S.C. 121. Specifically, 35 U.S.C. 121 states that “[i]f two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions.” Thus, while it is not mandatory for the PTO to restrict applications to a single invention, the statute specifically authorizes such restriction at the discretion of the Director. Before

any such discretion is exercised, however, the statute requires that there be “two or more independent and distinct inventions”.

Therefore, the existence of two or more distinct inventions in the claims is a statutory predicate for any restriction requirement. “[W]hether the requirements of section 121 have been satisfied is a question of law” that is reviewed *de novo* based upon a review of the relevant materials. *Bristol-Myers Squibb Co. v. Pharmachemie*, 361 F.3d 1343, Fn 1, 70 USPQ2d 1097, Fn 1 (Fed. Cir. 2004).

## 2. The Test for Distinctness

The test for distinctness as stated in the MPEP at section 806.05(c) is as follows:

The inventions are distinct if it can be shown that a combination as claimed:

(A) does not require the particulars of the subcombination as claimed for patentability (to show novelty and unobviousness), and

(B) the subcombination can be shown to have utility either by itself or in other and different relations.

When these factors cannot be shown, such inventions are not distinct.

The “test” is somewhat misleading in that the first proposition is assumed for the purposes of making a restriction determination. (MPEP 806.02). Thus, a claim drawn to a subcombination is distinct if it has utility separate from the combination of the combination claim.

## 3. The Allegation of Separate Utility is Specious

The Examiner attempts to argue that the distinctness test is met because the invention of claims 1-20 “has separate utility such as securely transmitting credit card data” while the invention of claims 21-25 “has separate utility such as monitoring



wireless network traffic.” (Office Action at page 2). The allegation of separate utility is specious.

The allegation that the invention of claims 1-20 may be used for securely transmitting transaction data is well taken. Moreover, the invention of claims 21-25 could in fact be used to “monitor” wireless network traffic, at least to the extent of determining the number of messages received at a receiving computer. Of course, it is also clear that the invention of claims 21-25 may be used for securely transmitting transaction data and the invention of claims 1-20 may be used to monitor wireless network traffic (see e.g. claim 2 wherein the regulator of claim 1 is a “load balancer” used to monitor communication bandwidth usage). Thus, the Examiner has merely identified two different functions that are performed by a single system incorporating the invention recited in any of the claims 1-25.

Therefore, the Examiner’s interpretation of MPEP 806.02 is that “utility” means “function” and that so long as an invention is capable of performing at least two functions, any two independent claims are necessarily “distinct” inventions. Moreover, the functions need not be related to the point of novelty. By way of example, the general functions of load balancing and secure transmission of data which the Examiner has relied upon are both well known in the relevant fields. The effect of the Examiner’s interpretation is to render the “test” of MPEP 806.02 meaningless since it would be challenging to find an invention that does not perform two functions. Such a result is “repugnant to basic principles of the rules of construction.” *In re Mosher*, 248 F.2d 956 (P.App. Cir. 1957).

More significantly, such an interpretation would allow the PTO to require restriction even though only a single invention was claimed. While the PTO’s rules may

be afforded some deference, the statute authorizing restriction practice is clearly limited to situations wherein “two or more independent and distinct inventions” are claimed.

The Federal Circuit has stated that “the courts are the final authority on the issues of statutory construction. They must reject administrative constructions, whether reached by adjudication or by rulemaking, that are inconsistent with the statutory mandate or that frustrate the policy Congress sought to implement.” *Hoechst Aktiengesellschaft v. Quigg*, 917 F.2d 522, 525, 16 USPQ2d 1549, 1552 (Fed. Cir. 1990), quoting, *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1425, 7 USPQ2d 1152, 1154 (Fed.Cir. 1988) (quoting *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32, 102 S.Ct. 38, 42, 70 L.Ed.2d 23 (1981)). Therefore, either MPEP 806.02 must be rejected or the Examiner’s interpretation of MPEP 806.02 must be rejected- as a matter of law.

#### 4. Conclusion

The restriction requirement levied by the Examiner is either based upon a section of the MPEP that is inconsistent with the statutory mandate for restrictions or based upon an interpretation of that MPEP section that is inconsistent with the statutory mandate. In either event, the statutory predicate for restriction has not been met and the restriction requirement must be reversed.<sup>1</sup>

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<sup>1</sup> Additionally, restriction is only allowed when the Examiner can show reasons for requiring a restriction. (MPEP 808.02). The Examiner has stated that the restriction is needed because of the “different classification” of claims 1-20 and 21-25. (Office Action at page 2). The MPEP requires, however, that the different claims also necessitate “a separate field of search.” (MPEP 808.02). The search conducted by the Examiner for claims 1-20 was directed to all of the elements in claims 21-25. (See Examiner’s Search Strategy and Results). Therefore, even if separate inventions were claimed, the restriction would be improper.

**The Rejection of Claims 1-20 under 35 U.S.C. § 101 Should be Reversed**

In the Office Action, claims 1-20 were rejected under 35 U.S.C. § 101 for lacking patentable utility. (Office Action at page 5). Claims 2-7, 9-14 and 16-20 were rejected as depending from claims 1, 8 and 15. The Examiner's rejection contradicts the Examiner's explicitly admitted understanding of the utility of the invention and is contrary to the cited rule.

1. The Examiner Has Admitted Utility of the Invention

The Examiner specifically stated that the "claimed method, system and apparatus are dedicated to the abstract idea of an algorithm for generating bogus messages without a practical utility (i.e. lacks utility)." (Office Action at page 5). Nonetheless, in setting forth his requirement for restriction, the Examiner explicitly admitted that the invention of claims 1-20 "has separate utility such as securely transmitting credit card data." (Office Action at page 2).

Therefore, since the Examiner admits that the invention of claims 1-20 has utility, the Board is respectfully requested to reverse the rejection of claims 1-20 under 35 U.S.C. § 101.

2. The Specification Asserts Specific, Substantial, and Credible Utilities for the Invention

The MPEP reflects the statutory mandate that any new and useful process, machine, manufacture or composition is the proper subject matter of a patent. (MPEP § 2106 at page 11). Moreover, the MPEP states that in determining whether or not an invention is useful, the Examiner "will review the complete specification, including the

detailed description of the invention, any specific embodiments that have been disclosed, the claims and any specific, substantial, and credible utilities that have been asserted for the invention.” (MPEP § 2106 at page 6 (emphasis added)).

Claims 1, 8 and 15 are all directed to the generation and transmission of bogus messages between a terminal and a host computer in a wireless network. As clearly set forth in the specification, the generation of bogus messages in a wireless retail store environment is very useful. Specifically, at page 6, lines 12-21 the Applicant’s Specification states:

The bogus message traffic camouflages the bona fide transactional message traffic flow so the usefulness of the data that may be gleaned from analyzing transactional data flow is degraded. Additionally, those persons eavesdropping on the store wireless communication traffic to obtain data for generating identification and financial transaction tokens are probably unable to distinguish valid transaction messages from bogus messages. Consequently, the interception of data messages from a wireless system incorporating the system and method of the present invention is rendered less profitable and useful for the manufacture of counterfeit tokens.

Therefore, the Applicant’s Specification clearly sets forth specific, substantial, and credible utilities for the inventions of claim 1, 8 and 15. Exhibit 1 is a printout from the Maryland Attorney General’s website.<sup>2</sup> As shown in Exhibit 1, statistics have shown that the cost of credit card on an annual basis was on the order of \$1 billion. One of the methods used to obtain the credit card numbers, was “electronic eavesdropping.” (Exhibit 1). Accordingly, an invention which mitigates the ability to decipher valid data in a wireless network has significant utility.

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<sup>2</sup> Notice of Exhibit I is proper under Fed. R. Evid. 201(b) and (d).

In contrast, even though the MPEP § 2106 at page 7 places the burden of establishing non-utility on the Examiner, the Examiner has failed to identify any *evidence* that the generation of bogus messages in a wireless retail store environment is not useful.

Accordingly, because the Applicant's Specification identifies the utility of the invention of claims 1, 8 and 15, and because the Examiner has failed to identify any *evidence* that the claimed invention is not useful, a *prima facie* case of non-utility has not been made and the rejection of claims 1, 8 and 15 under 35 U.S.C. § 101 should be withdrawn.

Claims 2-7, 9-14 and 16-20 depend from claims 1, 8 or 15 and include all of the limitations of the claims from which they depend. Therefore, the inventions identified in claims 2-7, 9-14 and 16-20 are useful for at least the same reasons discussed above with respect to claims 1, 8 and 15 and the rejection of claims 2-7, 9-14 and 16-20 under 35 U.S.C. § 101 should be withdrawn.

### 3. Conclusion

Therefore, for any or all of the above reasons, the claims are directed to statutory subject matter and include patentable utility. Accordingly, the Board of Appeals is respectfully requested to reverse the rejection of claims 1-20.

#### **Claim 2 Is Not Indefinite**

Claim 2 stands rejected under 35 U.S.C. §112 as being indefinite. (Office Action at page 6). The claim is clear and specific and the rejection should be reversed.

Other than the conclusory statement that claim 2 is indefinite, the basis for the Examiner's rejection is not clear. Specifically, the only "explanation" given by the

Examiner for the rejection of claim 2 is that “claim 2 recites load balancing.” (Office Action at page 6). The Examiner further makes reference to the use of the word “load” in claim 8 and states that “according to the applicant, “load” has two separate and distinct meanings. In order to accurately determine the scope of the claimed method, it is required that Applicant indicate which definition, or both, is being used.” (Office Action at page 6). The use of the word “load” in the claims and in the specification is clear.

The word “load” is used by those of ordinary skill in the art in different contexts and the metrics used to describe the load vary in accordance with the particular context. For example, the amount of data being transmitted between two devices may be identified as the “load” on the communications link. Thus, the metrics used in describing the “load” on a communications link would relate to the amount of bandwidth being used. On the other hand, “load” is also used by those of ordinary skill in the art when discussing the computational activity being performed by a computer. Thus, in the context of computational load, “load” relates to the number of computations performed per unit time. Accordingly, the word “load” may be used in different contexts and the particular meaning of “load” is dependent on the context in which it is used.

Therefore, the definition of the word “load” in claim 8 need not have any direct relationship to the definition of the word “load” as used in claim 2. This is particularly true since claim 8 recites “a load on the store host computer” and the term “load” is thus clearly directed to the computational activity of the computer. In contrast, claim 2 recites a “load balancer for measuring dead space in communication bandwidth.” Thus, because the term “communication bandwidth” is used in discussing the communications link, one of ordinary skill in the art would associate the term “load” in claim 2 with the amount of activity on a communications link.

Therefore, the meaning of the term “load” as used in the “load balancer” of claim 2 is clear and distinct to those of ordinary skill in the art. The Examiner has not presented any reasonable argument as to why a “load balancer” as recited in claim 2 is indefinite. Moreover, the limitation was not deemed indefinite in the first office action. Therefore, there is no basis for the Examiner’s rejection of claim 2 and the Board is respectfully requested to reverse the rejection of claim 2.

### **Claims 8-14 Are Not Indefinite**

Claims 8-14 stand rejected under 35 U.S.C. §112 as being indefinite. (Office Action at page 6). The meaning of the term “load” in the context of claims 8-14 is definite. Therefore, the claims are clear and specific and the rejection should be reversed.

Specifically, the Examiner appears to have alleged that claims 8-14 are indefinite because the claims recite “a load on the store host computer” and because the Applicant identified the “load” as depending upon the volume of traffic that is expected to be received and the amount of time necessary to process those messages. The Examiner objected to this definition stating that “ ‘volume’ and ‘time’ are different measures.” (Office Action at page 6).

As discussed above, the meaning of the word “load” depends upon its context. In the context of claims 8-14, the term is used in the context of a “load” on a computer. Thus, the relevant meaning of the word is the number of computations being performed per unit time. The specification describes the rather unremarkable concept that in order to estimate the computational load on a computer over a particular time interval, it is necessary to consider both the number of transactions that the computer will be asked to

process (volume of received messages) and the computational time required to process each message. (See Applicant's specification at page 9 lines 9-11). Thus, it is possible to estimate the number of computations that the computer is expected to be performing at a particular time using the expected volume of messages and the time (number of computations) needed to process those transactions.

Therefore, one of ordinary skill in the art would clearly understand that the "load on the store host computer" at a particular time in the context of the specification and the claims is dependent on both the volume of messages received and the time needed to process each message. Accordingly, there is no basis for the Examiner's rejection of claims 8-14 and the Board is respectfully requested to reverse the rejection of claims 8-14.

### **Claims 1-3, 6 and 7 are Not Obvious in View of Nordenstam, Cory and Munger**

#### *Discussion re: Patentability of Claim 1*

##### 1. Claim 1

Claim 1 recites the following:

A system for securing transactional data transmitted over a wireless network in a store comprising:  
a bogus message generator coupled to a wireless terminal in a store, the bogus message generator for generating bogus messages to be transmitted by the wireless terminal;  
a store host computer for receiving transactional and bogus messages from the wireless terminal; and  
a communication parameter regulator for measuring a communication parameter on the store host computer, the communication parameter regulator operable to activate the bogus message generator so that the bogus message generator is activated in accordance with the measured communication parameter.



Thus, in a system according to claim 1, a bogus message is transmitted from a wireless terminal based upon conditions sensed at the host computer which receives the bogus message from the wireless terminal.

2. There is No Motivation for the Proposed Combination

Claim 1 has been rejected based upon Nordenstam in view of Cory and Munger. Because the proposed modification changes the principle of operation of Nordenstam, there is no motivation for the proposed combination.

a. The System of Nordenstam

Nordenstam discloses a system wherein mobile terminals are used in a wireless transaction network. (Nordenstam at Abstract). Nordenstam discloses two network environments in which the disclosed system may be used. FIG. 3 depicts transaction terminals 22, 24 and 26 within a single local area network (LAN). (Id. at page 15, lines 10-17). FIG. 4 of Nordenstam depicts transaction terminals 22, 24 and 26 that are located in and operated by different stores. (See Id. at page 19, lines 4-15). Thus, FIG. 4 shows the operation of three separate but partially overlapping LANs. Nordenstam teaches a system that can be used in either environment to provide service card transactions over the wireless network.

Specifically, as taught by Nordenstam, mobile terminals and transaction terminals are configured with BLUETOOTH® capability. (Id. at page 15, lines 4-6). BLUETOOTH® capability allows for multiple devices to communicate in a wireless environment by creating so-called piconets. In a piconet, one of the devices operates as a master device and the remaining devices act as slave devices. Accordingly, in the single

LAN environment of FIG. 3, transaction terminal 22 operates as the master of the piconet or LAN. (Id. at page 15, lines 11-17). The master transaction terminal 22 is shown hardwired to the host computer 32. (Id. at page 15, lines 11-17). In the three LAN system of FIG. 4, each of the transaction terminals 22, 24 and 26 may be configured as a master terminal or another terminal (not shown) may be the master terminal. (Id. at page 18, lines 6-15). Each LAN in FIG. 4 operates as an independent piconet.

In either environment, a mobile telephone or personal digital assistant (PDA) may be used as a "mobile terminal" to access the store's network. (Id. at page 9, lines 12-15). Specifically, when the mobile terminal 10 enters into the range of a master terminal, a piconet is formed that includes the master terminal and the mobile terminal 10 in accordance with standard BLUETOOTH® protocol. (Id. at page 14, lines 12-22).

BLUETOOTH® devices comply with a standardized communications protocol, the description of which is available through the Internet site at [www.bluetooth.com](http://www.bluetooth.com). A short excerpt of the Specification of the Bluetooth System available through that site was submitted with the Applicant's Response of March 11, 2005. As set forth in that excerpt, when a piconet is established, communication is controlled by the master device. Specifically, the master establishes both the clock and the hopping pattern for all of the devices in the piconet. (Specification of the Bluetooth System, version 1.2, volume 1, at page 32). The master device also controls access to the physical data communications channel. (Id. at page 32). Accordingly, a slave device in a piconet is only allowed to transmit data to the master device of the piconet during certain restricted timeframes.

Therefore, Nordenstam teaches a system wherein a master terminal establishes communications with slave terminals. The communications may be relatively permanent for less mobile slave terminals (transaction terminals) or the communications may be

established as the slave terminals (mobile telephones and/or PDAs) enter the range of the master terminal. In either event, the slave terminals are only allowed to transmit data to the master terminal at specified times established by the master terminal, i.e. the slaves cannot transmit data to the master continuously.

b. The System of Cory

Cory discloses a cryptographic unit for automatically inserting dummy data into a transmitter when there is no valid character to be transmitted. (Cory at column 1, lines 19-23). The system of Cory first determines whether or not any valid data is available for transmission. (Id. at column 4, lines 2-5). If data is available, the data is transmitted. (Id. at column 4, lines 2-6). In the event there is no data, a "V" generator 58 is activated and a series of five characters or dummy data is transmitted in the form of five "V"s. (Id. at column 4, lines 15-19). At the completion of transmitting the fifth dummy data character, the system once again determines whether or not any valid data is available for transmission and repeats the sending of five characters (dummy data) if there is no valid data. (Id. at column 4, lines 21-24).

Accordingly Cory discloses a transmitter that automatically transmits a set of five characters (dummy data) whenever there is no valid data to transmit. The result is that anyone looking at the transmission line from the transmitter would not see any change in the traffic being transmitted by the transmitter. (Id. at column 4, lines 28-30). In other words, the transmitter of Cory is continuously transmitting, regardless of the availability of valid data or any conditions on the transmission line. Moreover, the determination of whether or not to transmit the dummy data is made at the transmitter based solely on

whether or not valid data is available for transmission by the transmitter. The activity, if any, on the receiving portion of the terminal is not considered.

Therefore, Cory teaches hiding actual data by continuously transmitting data, either real data or dummy data.

c. Conclusion

As discussed above, Nordenstam teaches a system that uses BLUETOOTH® technology. Accordingly, the system requires slave terminals to *not* transmit continuously to the master. In contrast, the terminal in the system of Cory, as discussed above, is configured to *continuously* transmit data, either real or bogus. The Examiner has not explained how the architecture of Nordenstam could be changed to incorporate a plurality of continuously transmitting slave devices in a piconet. Nonetheless, it is clear that any such redesign would necessarily change the principle of operation of the system disclosed by Nordenstam. Therefore, under *In re Ratti*, 270 F.2d 810, (CCPA 1959), there is no motivation for the proposed combination and the board should reverse the rejection of claim 1.

3. The Teachings of Cory Preclude Arriving at the Invention of Claim 1

When the use of Cory with Nordenstam was contested, the Examiner stated that only the “teachings” of the prior art were being relied upon. The Examiner has misidentified the teachings of Cory. When the actual teaching of Cory is used, the proposed modification cannot arrive at the invention of Claim 1.

The Examiner opined that it is permissible to use the “teaching” of Cory to modify the system of Nordenstam. (Office Action at page 3). In support of his position,

the Examiner cites to *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981) for the proposition that bodily incorporation of a reference is not needed when relying upon the teachings of the reference. (Office Action at page 4). The teaching of Cory, however, is that actual data may be hidden by continuously transmitting either real data or dummy data. The Examiner cannot selectively excise portions of the prior art and allege that such excised matter is the “teaching” of the reference. Such an approach was considered and rejected by the Federal Circuit.

Specifically, in *In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992), the Federal Circuit considered an obviousness rejection wherein it was alleged that the prior art taught a “flexible” device. (*In re Fritch*, 972 F.2d at 1264). The Federal Circuit determined that such a characterization of the teaching of the prior art was clear error in that the prior art could only be made flexible by removing an anchoring device from the device in the prior art and the prior art failed to teach removal of the anchoring device. *Id.* Similarly, it is clear error to characterize the teaching of Cory as anything other than hiding actual data by *continuously* transmitting either real data or dummy data.

A continuously transmitting system, as taught by Cory, is not the same as a system according to claim 1, wherein a bogus message is transmitted from a wireless terminal based upon conditions sensed at the host computer which receives the bogus message from the wireless terminal, regardless of any further modifications based upon Munger.

Under MPEP § 2142, the prior art must teach or suggest all of the claim limitations. Therefore, even assuming that Nordenstam can be combined with Cory, such a combination cannot arrive at the invention of claim 1 when the actual teaching of Cory is considered. Thus, a *prima facie* case of obviousness under 35 U.S.C. § 103 has not

been established with regard to the invention of claim 1 and the Board of Appeals is respectfully requested to reverse this rejection of claim 1.

4. Munger Has Been Mischaracterized

Moreover, even assuming *arguendo* that Nordenstam can somehow be modified by the teaching of Cory, the Examiner has mischaracterized Munger. Therefore, the proposed combination does not arrive at the invention of claim 1.

Specifically, the Examiner has admitted that the combination of Nordenstam and Cory does not teach or suggest the communication parameter regulator of claim 1. (Office Action at page 4). In looking to Munger for this limitation, the Examiner has merely stated that Munger discloses the monitoring of “network traffic conditions”. (Id. at page 8). Claim 1 recites, however, that the communication parameter regulator is operable to measure a particular parameter at a specific location on the network, namely, on the store host computer which is the recipient of the transmitted bogus message. Munger fails to disclose this limitation.

In the system of Munger, each terminal monitors its own traffic and drops or adds dummy packets and/or dummy data based upon its own internal algorithm. For example, all of the discussion in the passage from column 12, line 26 to column 14, line 38 of Munger is directed to the actions of an individual TARP terminal (or router).

Moreover, FIG. 5 depicts the particular steps of the method of Munger. (Id. at column 12, lines 58-61). Significantly, the steps include a background loop operation that applies the algorithm that controls generation or dropping of dummy packets and insertion of dummy data. (Id. at FIG. 5 and column 12, lines 62-65). As discussed in Munger, the background loop is “interrupted when an encrypted TARP package is

received.” (Id. at column 12, lines 62-65). The remaining steps of the method taught by Munger then depict the actions taken by the TARP terminal/router to process the received packet. (Id. at column 12, line 66 through column 13, line 38). Clearly, the algorithm taught by Munger is running on the TARP terminal/router.

Moreover, there is no teaching or suggestion that any TARP terminal/router is monitoring another TARP terminal/router or that any TARP terminal/router is interacting with or monitored and controlled by some other component. Significantly, Munger is also bereft of any teaching of a single device that issues messages to each of the TARP terminals/routers commanding a dummy message to be generated.

Therefore, to the extent Munger discloses monitoring at any specific location, the monitoring is performed at the same TARP terminal/router that generates the bogus message. Obviously, generating a bogus message based upon conditions at the bogus message transmitter as is done in Munger is not the same as monitoring a particular parameter at a receiver which will receive the transmitted bogus message as recited in claim 1.

Thus, even accepting *arguendo* the proposed combination so as to include the monitoring of a network condition as disclosed in Munger, the modification proposed by the Examiner does not arrive at the invention of claim 1. Therefore, the Examiner has failed to present a *prima facie* case of obviousness and the Board of Appeals is respectfully requested to reverse the rejection of claim 1 under 35 U.S.C. § 103(a).

5. Conclusion

For any or all of the above reasons, it is respectfully submitted that a *prima facie* case of obviousness has not been made and the Board of Appeals is respectfully requested to reverse the rejection of claim 1 under 35 U.S.C. § 103(a).

*Discussion Regarding Claims 2-3 and 6-7*

Claims 2-3 and 6-7 have been rejected as obvious for the same reasons set forth above with respect to claim 1. (Office Action at page 7). Claims 2-3 and 6-7 depend, either directly or by way of an intermediate claim, from claim 1 and incorporate all of the limitations of claim 1 as well as other limitations. Therefore, for at least the same reasons set forth above with respect to the patentability of claim 1 over the proposed combination of Nordenstam, Cory and Munger, claims 2-3 and 6-7 are patentable and the Board of Appeals is respectfully requested to reverse the rejections of claims 2-3 and 6-7.

**Claim 4 is Not Obvious in View of Nordenstam, Cory and Munger**

*Discussion Regarding Claim 4*

1. The Discussion of Claim 1 Applies

As an initial matter, claim 4 has been rejected as obvious over Nordenstam, Cory and Munger for the same reason set forth above with respect to claim 1. (Office Action at page 7). Claim 4 depends from claim 1 and incorporates all of the limitations of claim 1. Therefore, for at least the same reasons set forth above with respect to the patentability of claim 1 over the proposed combination of Nordenstam, Cory and Munger, claim 4 is patentable and the Board of Appeals is respectfully requested to reverse the rejection of claim 4.



2. The Proposed Modification Does Not Arrive at the Claimed Invention

Moreover, claim 4 further recites a system wherein generation of a bogus message is terminated “in response to a bona fide transaction occurring” at the terminal. The Examiner has not identified any such limitation in the prior art.

Specifically, Nordenstam does not teach the generation of bogus messages. (See, e.g. Office Action at pages 7-8). Therefore, Nordenstam cannot teach termination of bogus message generation. Cory, as discussed above, terminates transmission of dummy characters only after the series of five dummy characters has been transmitted. Assuming *arguendo* that receipt of valid data is equivalent to a transaction occurring, even if data arrives, the complete set of five dummy characters will be transmitted. Therefore, Cory does not teach early termination of bogus message generation.

Finally, the Applicant has found no teaching in Munger of terminating the generation of a bogus message based upon received data. Thus, even assuming that receiving a data package is the equivalent of a transaction occurring, such an occurrence is only used in the system of Munger to determine whether or not to *generate* a bogus message. A determination as to whether or not to *start* a process is not the same as a determination of whether or not to *terminate* a process.

Therefore, the Examiner has failed to allege that every element of claim 4 is present in the cited art. Accordingly, even assuming the combination proposed by the Examiner includes all of the limitations of claim 1, a *prima facie* case of obviousness under 35 U.S.C. § 103 has not been established with regard to the invention of claim 4 and the Board of Appeals is respectfully requested to reverse this rejection of claim 4.

3. Conclusion

For some or all of the above reasons, claim 4 is not obvious in view of the combination of Nordenstam, Cory and Munger. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 4.

**Claim 5 is Not Obvious in View of Nordenstam, Cory and Munger**

*Discussion Regarding Claim 5*

1. The Discussion of Claim 1 Applies

As an initial matter, claim 5 has been rejected as obvious over Nordenstam, Cory and Munger for the same reason set forth above with respect to claim 1. (Office Action at page 7). Claim 5 depends from claim 2, which in turn depends from claim 1, and incorporates all of the limitations of claim 1. Therefore, for at least the same reasons set forth above with respect to the patentability of claim 1 over the proposed combination of Nordenstam, Cory and Munger, claim 5 is patentable and the Board of Appeals is respectfully requested to reverse the rejection of claim 5.

2. The Proposed Modification Does Not Arrive at the Claimed Invention

Moreover, claim 5 further recites a system with a load balancer that generates a bogus message request “in response to the computed dead space [in the communication bandwidth (see claim 2)] being greater than a threshold.” The Examiner has not identified any such limitation in the prior art.

Specifically, Nordenstam does not teach the generation of bogus messages. (See, e.g. Office Action at pages 7-8). Cory, as discussed above, terminates transmission of dummy characters only after the series of five dummy characters has been transmitted.

Finally, Munger teaches that bogus messages may be generated based upon time or number of messages received. Obviously, while there may be a relationship between the number of messages being received and the bandwidth used, the relationship is not direct inasmuch as the data size of the messages varies. Thus, the number of messages being received is not the same as the bandwidth being used to transmit messages.

Therefore, the Examiner has failed to allege that every element of claim 5 is present in the cited art. Accordingly, even assuming the combination proposed by the Examiner includes all of the limitations of claim 1, a *prima facie* case of obviousness under 35 U.S.C. § 103 has not been established with regard to the invention of claim 5 and the Board of Appeals is respectfully requested to reverse this rejection of claim 5.

3. Conclusion

For some or all of the above reasons, claim 5 is not obvious in view of the combination of Nordenstam, Cory and Munger. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 5.

**Claims 8 and 14 are Not Obvious in View of Nordenstam, Cory and Munger**

*Discussion re: Patentability of Claim 8*

1. Claim 8

Claim 8 recites the following:

A method for securing transactional data communicated over a wireless network in a store comprising:  
determining dead space intervals on a store host computer based upon a load on the store host computer;  
generating bogus transactional messages for transmission over a wireless communication network for communicating data between the store host computer and a terminal located in a store; and

transmitting the bogus transactional messages over the wireless communication network during the dead space intervals.

Thus, in a system according to claim 8, a bogus message is transmitted over a wireless network based upon the computational load at the host computer.

2. There is No Motivation for the Proposed Combination

Claim 8 has been rejected based upon Nordenstam in view of Cory and Munger. This is the same combination discussed above with respect to claim 1. Therefore, for the same reasons set forth above with respect to claim 1, there is no motivation for the proposed combination with respect to claim 8.

3. The Teachings of Cory Preclude Arrival at the Invention of Claim 8

As discussed above, Cory teaches transmission of dummy characters based solely upon the unavailability of actual data. Cory makes no disclosure regarding a decision of whether or not to transmit dummy data that is dependent upon the computational load on a computer. Therefore, even if a computer is fully loaded, the system of Cory will still transmit dummy data if there is no actual data available.

Cory fails to disclose any relationship between the computational load on a computer and the availability of data to be transmitted. Thus, a continuously transmitting system, as taught by Cory, is not the same as a system according to claim 8, wherein a bogus message is transmitted from a wireless terminal based upon the computational load of the host computer which receives the bogus message from the wireless terminal.

Under MPEP § 2142, the prior art must teach or suggest all of the claim limitations. Therefore, even assuming that Nordenstam can be combined with Cory, such

a combination cannot arrive at the invention of claim 1 when the actual teaching of Cory is considered, regardless of any further modification based upon Munger. Thus, a *prima facie* case of obviousness under 35 U.S.C. § 103 has not been established with regard to the invention of claim 8 and the Board of Appeals is respectfully requested to reverse this rejection of claim 8.

4. Prima Facie Obviousness Has Not Been Alleged

Moreover, even assuming *arguendo* that Nordenstam can somehow be modified by the teaching of Cory and Munger, the proposed modification does not arrive at the invention of claim 8.

Specifically, neither Nordenstam nor Cory disclose a system that determines whether or not to generate a bogus message based upon computational load of a computer. Nordenstam does not disclose generation of any bogus messages and Cory, as discussed above, basis the determination solely on the unavailability of actual data. The Examiner has relied upon Munger for teaching the monitoring of “network traffic conditions”. (Office Action at page 8). As discussed above, Munger teaches generation of bogus messages based upon time of day or number of messages received. Claim 8 recites, however, that the determination is based upon a determined computer loading. Munger fails to disclose this limitation.

Thus, even accepting *arguendo* the proposed combination so as to include the monitoring of a network condition as disclosed in Munger, the modification proposed by the Examiner does not arrive at the invention of claim 8. Therefore, the Examiner has failed to present a *prima facie* case of obviousness and the Board of Appeals is respectfully requested to reverse the rejection of claim 8 under 35 U.S.C. § 103(a).

5. Conclusion

For any or all of the above reasons, it is respectfully submitted that a *prima facie* case of obviousness has not been made and the Board of Appeals is respectfully requested to reverse the rejection of claim 8 under 35 U.S.C. § 103(a).

*Discussion Regarding Claim 14*

Claim 14 has been rejected as obvious for the same reasons set forth above with respect to claim 8. (Office Action at page 7). Claim 14 depends from claim 8 and incorporates all of the limitations of claim 8 as well as other limitations. Therefore, for at least the same reasons set forth above with respect to the patentability of claim 8 over the proposed combination of Nordenstam, Cory and Munger, claim 14 is patentable and the Board of Appeals is respectfully requested to reverse the rejection of claims 14.

**Claims 9-12 are Not Obvious in View of Nordenstam, Cory and Munger**

*Discussion Regarding Claim 9*

1. The Discussion of Claim 8 Applies

As an initial matter, claim 9 has been rejected as obvious over Nordenstam, Cory and Munger for the same reason set forth above with respect to claim 8. (Office Action at page 7). Claim 9 depends from claim 8 and incorporates all of the limitations of claim 8. Therefore, for at least the same reasons set forth above with respect to the patentability of claim 8 over the proposed combination of Nordenstam, Cory and Munger, claim 9 is patentable and the Board of Appeals is respectfully requested to reverse the rejection of claim 9.

2. The Proposed Modification Does Not Arrive at the Claimed Invention

Moreover, claim 9 further recites a method wherein the communications traffic is used to determine the computational load on the computer. The Examiner has not identified any such limitation in the prior art.

Specifically, Nordenstam does not teach the generation of bogus messages. (See, e.g. Office Action at pages 7-8). Cory, as discussed above, terminates transmission of dummy characters only after the series of five dummy characters has been transmitted. Finally, Munger teaches that bogus messages may be generated based upon time or number of messages received. Munger fails to disclose, however, that the number of messages received is used in determining a computational load on a computer. Rather, Munger is directed to changing the size of the messages being received and transmitted. (See, e.g. Munger at column 5, lines 44-48). Using data to vary the size of dummy messages is not the same as using data to determine computational load on a computer.

Therefore, the modifications of Nordenstam proposed by the Examiner do not arrive at the invention of claim 9. Accordingly, a *prima facie* case of obviousness under 35 U.S.C. § 103 has not been established with regard to the invention of claim 9 and the Board of Appeals is respectfully requested to reverse this rejection of claim 9.

3. Conclusion

For some or all of the above reasons, claim 9 is not obvious in view of the combination of Nordenstam, Cory and Munger. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 9.

*Discussion Regarding Claims 10-12*

Claims 10-12 have been rejected as obvious for the same reasons set forth above with respect to claim 9. (Office Action at page 7). Claims 10-12 depend, either directly or by way of intermediate claims, from claim 9 and incorporate all of the limitations of claim 9 as well as other limitations. Therefore, for at least the same reasons set forth above with respect to the patentability of claim 9 over the proposed combination of Nordenstam, Cory and Munger, claims 10-12 are patentable and the Board of Appeals is respectfully requested to reverse the rejection of claims 10-12.

**Claims 13 is Not Obvious in View of Nordenstam, Cory and Munger**

*Discussion Regarding Claim 13*

1. The Discussion of Claim 8 Applies

As an initial matter, claim 13 has been rejected as obvious over Nordenstam, Cory and Munger for the same reason set forth above with respect to claim 8. (Office Action at page 7). Claim 13 depends from claim 8, by way of intermediate claims, and incorporates all of the limitations of claim 8. Therefore, for at least the same reasons set forth above with respect to the patentability of claim 8 over the proposed combination of Nordenstam, Cory and Munger, claim 13 is patentable and the Board of Appeals is respectfully requested to reverse the rejection of claim 13.

2. The Proposed Modification Does Not Arrive at the Claimed Invention

Moreover, claim 13 further recites a method wherein generation of a bogus message is terminated “in response to a bona fide transaction occurring” at the terminal. For purposes of this discussion, this is the same element discussed above with respect to



claim 4. Therefore, for the same reasons set forth above with respect to claim 4 for this element, the modifications of Nordenstam proposed by the Examiner do not arrive at the invention of claim 13. Accordingly, a *prima facie* case of obviousness under 35 U.S.C. § 103 has not been established with regard to the invention of claim 13 and the Board of Appeals is respectfully requested to reverse this rejection of claim 13.

3. Conclusion

For some or all of the above reasons, claim 13 is not obvious in view of the combination of Nordenstam, Cory and Munger. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 13.

**Claim 15-17 are Not Obvious in View of Nordenstam, Cory and Munger**

*Discussion Regarding Claim 15*

Claim 15 has been rejected as obvious over Nordenstam, Cory and Munger for the same reason set forth above with respect to claim 1. (Office Action at page 7). As discussed above with respect to claim 1, Nordenstam teaches a system that uses BLUETOOTH® technology. Accordingly, the system requires slave terminals to *not* transmit continuously to the master. In contrast, the terminal in the system of Cory, as discussed above, is configured to *continuously* transmit data, either real or bogus.

The Examiner has not explained how the architecture of Nordenstam could be changed to incorporate a plurality of continuously transmitting slave devices in a piconet. Nonetheless, it is clear that any such redesign would necessarily change the principle of operation of the system disclosed by Nordenstam. Therefore, under *In re Ratti*, 270 F.2d

810, (CCPA 1959), there is no motivation for the proposed combination and the board should reverse the rejection of claim 15.

*Discussion Regarding Claims 16-17*

Claims 16-17 have been rejected as obvious for the same reasons set forth above with respect to claim 15. (Office Action at page 7). Claims 16-17 depend, either directly or by way of intermediate claims, from claim 15 and incorporate all of the limitations of claim 15 as well as other limitations. Therefore, for at least the same reasons set forth above with respect to the patentability of claim 15 over the proposed combination of Nordenstam, Cory and Munger, claims 16-17 are patentable and the Board of Appeals is respectfully requested to reverse the rejection of claims 16-17.

**Claims 18-19 are Not Obvious in View of Nordenstam, Cory and Munger**

*Discussion Regarding Claim 18*

1. The Discussion of Claim 15 Applies

As an initial matter, claim 18 has been rejected as obvious over Nordenstam, Cory and Munger for the same reason set forth above with respect to claim 15. (Office Action at page 7). Claim 18 depends from claim 15 and incorporates all of the limitations of claim 15. Therefore, for at least the same reasons set forth above with respect to the patentability of claim 15 over the proposed combination of Nordenstam, Cory and Munger, claim 18 is patentable and the Board of Appeals is respectfully requested to reverse the rejection of claim 18.

2. The Proposed Modification Does Not Arrive at the Claimed Invention

Moreover, claim 18 further recites a bogus message generator that includes “a bogus message timer” that is used to terminate transmission of bogus messages. The Examiner has not identified any such limitation in the prior art.

Specifically, Nordenstam does not teach the generation of bogus messages. (See, e.g. Office Action at pages 7-8). Thus, Nordenstam cannot disclose a bogus message timer. Cory, as discussed above, terminates transmission of dummy characters only after the series of five dummy characters has been transmitted. Thus, there is no need for a timer to be used in terminating the generation of bogus messages. Finally, Munger teaches that bogus messages may be generated based upon time or number of messages received. Munger fails to disclose, however, any timing device that is used to determine when to terminate generation of bogus messages. Rather, Munger is directed to changing the size of the messages being received and transmitted. (See, e.g. Munger at column 5, lines 44-48). Using data to vary the size of dummy messages is not the same as using a timer to determine when to stop generating bogus messages.

Therefore, the modifications of Nordenstam proposed by the Examiner do not arrive at the invention of claim 18. Accordingly, a *prima facie* case of obviousness under 35 U.S.C. § 103 has not been established with regard to the invention of claim 18 and the Board of Appeals is respectfully requested to reverse this rejection of claim 18.

3. Conclusion

For some or all of the above reasons, claim 18 is not obvious in view of the combination of Nordenstam, Cory and Munger. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 18.

*Discussion Regarding Claim 19*

Claim 19 has been rejected as obvious for the same reasons set forth above with respect to claim 18. (Office Action at page 7). Claim 19 depends from claim 18 and incorporates all of the limitations of claim 18 as well as other limitations. Therefore, for at least the same reasons set forth above with respect to the patentability of claim 18 over the proposed combination of Nordenstam, Cory and Munger, claim 19 is patentable and the Board of Appeals is respectfully requested to reverse the rejection of claim 19.

**Claim 20 is Not Obvious in View of Nordenstam, Cory and Munger**

*Discussion Regarding Claim 20*

1. The Discussion of Claim 15 Applies

As an initial matter, claim 20 has been rejected as obvious over Nordenstam, Cory and Munger for the same reason set forth above with respect to claim 15. (Office Action at page 7). Claim 20 depends from claim 15 and incorporates all of the limitations of claim 15. Therefore, for at least the same reasons set forth above with respect to the patentability of claim 15 over the proposed combination of Nordenstam, Cory and Munger, claim 20 is patentable and the Board of Appeals is respectfully requested to reverse the rejection of claim 20.

2. The Proposed Modification Does Not Arrive at the Claimed Invention

Moreover, claim 20 further recites a method wherein generation of a bogus message is terminated “in response to a bona fide transaction occurring” at the terminal. For purposes of this discussion, this is the same element discussed above with respect to

claim 4. Therefore, for the same reasons set forth above with respect to claim 4 for this element, the modifications of Nordenstam proposed by the Examiner do not arrive at the invention of claim 20. Accordingly, a *prima facie* case of obviousness under 35 U.S.C. § 103 has not been established with regard to the invention of claim 20 and the Board of Appeals is respectfully requested to reverse this rejection of claim 20.

3. Conclusion

For some or all of the above reasons, claim 20 is not obvious in view of the combination of Nordenstam, Cory and Munger. Accordingly, the Board of Appeals is respectfully requested to reverse this rejection of claim 20.

**(8) CONCLUSION**

The withdrawal from examination of claims 21-25 by the Examiner is contrary to the law. Claims 1-20 have utility and claims 2 and 8-14 are not indefinite. Moreover, claims 1-20 are not obvious in view of a combination of Nordenstam, Cory and/or Munger. Accordingly, the Board of Appeals is respectfully requested to reverse the rejections of claims 1-20 and the withdrawal by the Examiner of claims 21-25.

Respectfully submitted,

MAGINOT, MOORE & BECK

A handwritten signature in black ink, appearing to read "James D. Wood", written in a cursive style.

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## **(9) CLAIMS APPENDIX**

**Claim 1.** A system for securing transactional data transmitted over a wireless network in a store comprising:

a bogus message generator coupled to a wireless terminal in a store, the bogus message generator for generating bogus messages to be transmitted by the wireless terminal;

a store host computer for receiving transactional and bogus messages from the wireless terminal; and

a communication parameter regulator for measuring a communication parameter on the store host computer, the communication parameter regulator operable to activate the bogus message generator so that the bogus message generator is activated in accordance with the measured communication parameter.

**Claim 2.** The system of claim 1 wherein:

the communication parameter regulator is a load balancer for measuring dead space in a communication bandwidth between the store host computer and the wireless terminal.

**Claim 3.** The system of claim 1 wherein the bogus message generator terminates bogus message generation in response to a bogus message time expiration.

**Claim 4.** The system of claim 1 wherein the bogus message generator terminates bogus message generation in response to a bona fide transaction occurring at the wireless terminal.

**Claim 5.** The system of claim 2 wherein the load balancer generates a bogus message request in response to the computed dead space being greater than a threshold.

**Claim 6.** The system of claim 1 wherein the wireless terminal further comprising:  
an encryption module for encrypting the bogus messages transmitted to the store host computer.

Claim 7. The system of claim 6 wherein the store host computer further comprising an encryption module for decrypting the bogus messages received from the wireless terminal.

Claim 8. A method for securing transactional data communicated over a wireless network in a store comprising:

determining dead space intervals on a store host computer based upon a load on the store host computer;

generating bogus transactional messages for transmission over a wireless communication network for communicating data between the store host computer and a terminal located in a store; and

transmitting the bogus transactional messages over the wireless communication network during the dead space intervals.

Claim 9. The method of claim 8 wherein:

the method further comprises monitoring communication traffic at a store host computer; and

the step of determining comprises computing the dead space intervals for transmission of the bogus transactional messages from the monitored communication traffic.

Claim 10. The method of claim 9 further comprising:

generating a bogus request message in response to the computed dead space being less than a threshold.

Claim 11. The method of claim 10 further comprising:

activating the bogus transactional message generation in response to receiving the bogus request message.

Claim 12. The method of claim 11 further comprising:



terminating the bogus transactional message generation in response to a bogus message timer expiration.

Claim 13. The method of claim 11 wherein:

the step of generating comprises generating the bogus transactional messages at a terminal; and

the method further comprises terminating the bogus transactional message generation in response to a bona fide transaction occurring at the terminal where the bogus transactional message generation is occurring.

Claim 14. The method of claim 8 further comprising:

parsing a received transactional message at a store host computer;

detecting a bogus transactional message received at a store host computer; and

discarding the detected bogus transactional message so the store host computer does not process the bogus transactional message for transaction approval.

Claim 15. A point-of-sale terminal for communicating transactional messages over a wireless communication network to a store host computer comprising:

a bogus message generator for generating bogus transactional messages; and

a transmitter coupled to the bogus message generator for sending the generated bogus transactional messages to a store host computer.

Claim 16. The terminal of claim 15 wherein the bogus message generator generates bogus transactional messages in accordance with parameters received in a bogus request message.

Claim 17. The terminal of claim 16 wherein the bogus message generator generates the bogus transactional messages in accordance with a message length parameter received in the bogus request message.

Claim 18. The terminal of claim 15 wherein the bogus message generator includes a bogus message timer and the bogus message generator generates the bogus transactional messages until the bogus message timer expires.

Claim 19. The terminal of claim 18 wherein the bogus message generator sets the bogus message timer in accordance with a bogus time generation value received in a bogus request message.

Claim 20. The terminal of claim 15 wherein the bogus message generator terminates the bogus transactional message generation in response to a bona fide transaction.

Claim 21. A communication parameter regulator for a wireless store host network comprising:

- a microprocessor programmed to
  - determine the number of transaction messages received at a receiving component,
  - estimate the load on the receiving component,
  - compare the estimated load to a predetermined load, and
  - generate a bogus message request.

Claim 22. The communication parameter regulator of claim 21, wherein the microprocessor is further programmed to

- generate a bogus message request for delivery to a transmitter operable to transmit a bogus message to the receiving component.

Claim 23. The communication parameter regulator of claim 21, wherein the microprocessor is further programmed to estimate the load on the receiving component by:

- using the average length of time required for the receiving component to process the received transaction messages; and

using the average time between receipt of transaction messages by the receiving component.

Claim 24. The communication parameter regulator of claim 21, wherein the microprocessor is further programmed to generate a bogus message request comprising a plurality of parameters to be used by a bogus message generator in generating a bogus message.

Claim 25. The communication parameter regulator of claim 24, wherein the plurality of parameters comprises one or more parameters from the group consisting of:

- the length of the bogus message;

- the number of bogus messages to be generated;

- the amount of time during which the bogus messages are to be generated;

- bogus account numbers; and

- bogus customer data.

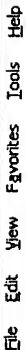
**(10) EVIDENCE APPENDIX**

Exhibit I      Printout from Maryland Attorney General's website at  
<http://www.oag.state.md.us/consumer/tip30.htm>. Available pursuant to  
Fed. R. Evid. 201(b) and (d).

10/035,464

**(11) RELATED PROCEEDINGS APPENDIX**

None.



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**MARYLAND ATTORNEY GENERAL**  
*J. Joseph Curran, Jr.*

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### Consumer Publications List

## How to Avoid Credit Card Fraud

According to the National Fraud Information Center, credit card fraud in the U.S. takes an annual toll of slightly under \$1 billion a year. But who pays the price tag? We all do, in the form of higher finance charges, annual fees, and costs for law enforcement.

Con artists commit fraud by stealing and selling credit cards, using counterfeit cards, and operating mail order and telemarketing scams. Some thieves raid mailboxes and trash cans to find credit cards and account numbers. And some clever scam artists get this information through electronic eavesdropping and other high-tech means.

Although credit card companies are working to design more counterfeit-proof cards, you still need to take some simple precautions to outsmart con artists and avoid becoming another victim of fraud.

## Protect Your Credit Card

Missie Sneak is an expert at robbing consumers' mail boxes for credit cards that have not yet been signed by their owners. She simply signs the owner's name on the card and heads for the shopping mall. The next day, she throws the card away and looks for another one.

- Be aware of when your renewed cards and billing statements usually arrive so you can contact your card issuer if there's a delay.
- Sign new cards as soon as they arrive. In a secure place, keep a record of all your card numbers, expiration dates, phone numbers and addresses of the card issuers.
- Periodically check your cards to make sure none are missing.
- Make it a practice not to lend your credit card to anyone. When giving your card to a salesclerk, keep it in view, and ask for it back promptly after an imprint has been taken.

## Guard Your Credit Card Number

**Gary Gullible received a phone call from a woman promoting discount vacation packages. All she needed was his credit card number and expiration date, she said, to include him in a 'special deal' for a Hawaiian vacation. Gary found out the offer was phony when he never received his airline tickets although his credit card was charged for them.**

- Never give your credit card number over the phone or computer unless you're dealing with a company you know.
- Don't put your address and phone number on a credit card transaction form. Under Maryland law, businesses cannot record or even request this information as a condition of accepting your credit card.
- If you pay by check, don't allow salesclerks to record your credit card account number. However, they are allowed to see your card and record the type (VISA, Mastercard, etc.) and the name of the issuer.
- Memorize your PIN number (personal identification number) and don't keep it with your card. Don't select a PIN that someone could easily guess, such as your phone number or name.

## Use Your Card Wisely

**Harried Helen was holiday shopping when her wallet was stolen from her purse. She didn't realize until she got home that all ten of her credit cards had been stolen. She was sorry she hadn't left home the eight cards she rarely uses.**

- Avoid signing blank receipts. Draw a line through any blank spaces above the total when you sign.
- Destroy carbons and voided receipts immediately.
- Save all credit card receipts in a secure place so that you can check them against each statement.
- Carry only the cards you most frequently use, and leave the rest at home. If you don't use certain cards at all, cut them up and throw them away.
- Notify your card company in advance of your change of address so new cards aren't sent to your old address.
- If you lose your card or discover it's been stolen, call the card issuer immediately. Most have a toll-free number. By law, you're not responsible for any unauthorized charges from the time you report the loss or theft, so document the date and time

you called. If the cards are used before you report their loss, the most you'll have to pay is \$50 per card.

- If you think someone's used your credit card or account number without authorization, notify the card issuer immediately.

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Maryland Attorney General's Consumer Protection Division  
Consumer hotline: (410) 528-8662 or 1 (888) 743-0023 toll-free

Attorney General of Maryland 1 (888) 743-0023 toll-free / TDD: (410) 576-6372  
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